

ARKANSAS SUPREME COURT

No. CR 05-688

NOT DESIGNATED FOR PUBLICATION

DANIEL DRABBANT
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 9, 2006

PRO SE APPEAL FROM THE CIRCUIT COURT
OF JACKSON COUNTY, CR 99-143, HON.
HAROLD S. ERWIN, JUDGE

AFFIRMED

PER CURIAM

In 1999, Daniel Drabbant entered a negotiated plea of guilty to rape and was sentenced to 300 months' imprisonment in the Arkansas Department of Correction. On May 10, 2005, Drabbant filed a petition for writ of *habeas corpus* under Ark. Code Ann. §§ 16-112-101–16-112-123 (1987) in Jackson County Circuit Court, which was denied. He now brings this appeal of that order.

The State raises what it presents as a jurisdictional issue, that appellant Drabbant argues on appeal that he was denied requested testing of DNA, without having filed a petition under Act 1780 of the 2001 Acts of Arkansas. Without question, appellant's petition does not reference Act 1780 or request testing. The only reference to DNA testing is a statement that there was none, which was listed as a basis for the allegation that the petitioner's conviction was invalid. This is clearly not sufficient to have presented any argument concerning a request for testing to the trial court, and we are precluded from considering the argument on appeal. *Taylor v. State*, 354 Ark. 450, 125 S.W.3d 174 (2003).

Appellant does assert arguments on appeal as to the validity of his judgment, but Jackson County Circuit Court did not have jurisdiction so as to provide the *habeas* relief as requested. The court did have the jurisdiction to consider the petition and determine whether the writ should be issued, but a circuit court does not have jurisdiction to release on a writ of *habeas corpus* a prisoner

not in custody in that court's jurisdiction. *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991). Appellant is not now, and was not at the time the petition was filed, incarcerated in Jackson County. This court has consistently held that an appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of *habeas corpus*, will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (*per curiam*); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*). Here, appellant cannot prevail because the circuit court cannot provide the relief he requests.

Moreover, appellant's allegations would not have merited relief, either as a claim under Act 1780, were we to consider it, or as a claim for other *habeas* relief. Despite appellant's assertion to the contrary, his guilty plea is an admission of guilt that settles all question as to whether identity was an issue, and so precludes further consideration of his Act 1780 claim. *See Graham v. State*, 358 Ark. 296, ___ S.W.3d ___ (2004) (*per curiam*). Appellant argues that his plea was not such an admission of guilt because it was not voluntary. But, a challenge to the guilty plea was properly raised in a timely petition under Ark. R. Crim. P. 37.1, and Act 1780 does not provide a substitute for that remedy because appellant later wishes to attack the plea. *Id.*

Nor are appellant's claims cognizable for other *habeas* relief. It is well settled that the burden is on the petitioner in a *habeas corpus* petition to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of *habeas corpus* should issue. *Young v. Norris*, ___ Ark. ___, ___ S.W.3d ___ (February 2, 2006) (*per curiam*). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing, by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. Ark. Code Ann. 16-112-103 (1987). *See Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 478 (1989). Here, appellant's claims challenged the evidence against him and the voluntariness of his plea, and alleged

ineffective assistance of his trial counsel. A *habeas corpus* proceeding does not afford a prisoner an opportunity to retry his case, and is not a substitute for direct appeal or postconviction relief. *Friend v. Norris*, ___ Ark. ___, ___ S.W.3d ___ (December 1, 2005) (*per curiam*). Appellant's claims pose the type of questions that require the kind of factual inquiry that goes well beyond the facial validity of the commitment and is therefore best left to a postconviction proceeding. *Id.* The circuit court correctly determined that the issues were not cognizable in a *habeas* proceeding.

Appellant protests that he should have received an evidentiary hearing. A hearing is not required if the petition does not allege either of the bases of relief proper in a *habeas* proceeding. *Mackey*, 307 Ark. at 322, 819 S.W.2d at 704. Appellant contends that he should have received a hearing because the State failed to file a responsive pleading to his petition. We are not aware of any such requirement and appellant cites no authority for his argument. This court will not consider an argument that presents no citation to authority or convincing argument. *Kelly v. State*, 350 Ark. 238, 85 S.W.3d 893 (2002).

In his brief, appellant raises an allegation that the judgment is invalid on its face because it does not indicate whether the victim was under or over the age of 18. He does not explain how this omission would invalidate the judgment, and we do not research or develop arguments for appellants. *Hester v. State*, ___ Ark. ___, ___ S.W.3d ___ (May 19, 2005). In any case, as the State correctly points out, the issue was not presented in appellant's petition. Because it was not raised below, we do not consider it on appeal. *Taylor*, 354 Ark. at 460, 125 S.W.3d at 181. Appellant has failed to show any reversible error and we affirm the denial of the petition.

Affirmed.